

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

GOURMET BOUTIQUE WEST, LLC

and

**Cases 28-CA-145632
28-CA-149064**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99, AFL-CIO, CLC**

DECISION AND ORDER

Statement of the Cases

On June 10, 2015, Gourmet Boutique West, LLC (the Respondent), United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

Gourmet Boutique West, LLC (the Respondent) is a limited liability company with an office and place of business in Phoenix, Arizona (the Respondent's facility), and has been engaged in the manufacture of specialty foods which are supplied to supermarkets and gourmet food stores.

In conducting its operations during the 12-month period ending February 3, 2015, the Respondent has sold and shipped from its facility goods valued in excess of \$50,000 directly to points outside the State of Arizona.

The Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

The United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC (the Union) and the AZ Employee Committee are labor organizations within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, Gourmet Boutique West, LLC, Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression that it is engaged in surveillance of employees' union or other protected concerted activities.

(b) Interrogating employees regarding their activities on behalf of the Union or their sentiments toward the Union.

(c) Interrogating employees regarding other employees' activities on behalf of the Union or their sentiments toward the Union.

(d) Promising employees benefits if they inform the Respondent about the union activities of other employees.

(e) Threatening employees with unspecified reprisals because they engaged in union or other protected concerted activities.

(f) Soliciting complaints and grievances from employees in order to discourage them from supporting the Union.

(g) Threatening employees with loss of benefits if the Respondent's employees obtain union representation.

(h) Informing employees that it would be futile for them to select the Union as their representative.

(i) Undermining the Union as a bargaining representative by informing employees that the Union agent was in jail for identity theft.

(j) Threatening employees with discharge because of their union or other protected concerted activities.

(k) Undermining the Union by telling employees that the Union will use the authorization cards for purposes other than its organizing campaign.

(l) Soliciting employees to sign a letter or a petition seeking the return of their authorization cards from the Union.

(m) Engaging in surveillance of employees' union activities or other concerted activities.

(n) Threatening employees with unspecified reprisals if they do not ask for their union authorization cards back.

(o) Threatening employees by telling them that the Respondent's facility will be sold if the employees select the Union as their representative.

(p) Promising employees increased benefits and improved terms and conditions of employment if they reject the Union.

(q) Summoning local police to implement its demand that Union agents and employees remove themselves from public property and cease lawful handbilling on behalf of the Union.

(r) Promulgating and enforcing an overly broad rule or directive prohibiting employees from distributing union fliers during non-work time anywhere at the Respondent's facility.

(s) Threatening employees with discharge and unspecified reprisals if they violate an overly broad rule or directive prohibiting employees from distributing union fliers during non-work time anywhere at the Respondent's facility.

(t) Promulgating an overly broad rule or directive that prounion employees cannot talk to fellow employees at the Respondent's facility.

(u) Threatening employees with unspecified reprisals if they violate an overly broad rule or directive that prounion employees cannot talk to fellow employees at the Respondent's facility.

(v) Issuing warnings to prounion employees for talking to fellow employees at the Respondent's facility.

(w) Promulgating an overly broad rule or directive prohibiting employees from wearing union insignia while permitting employees to wear other insignia.

(x) Threatening employees with unspecified reprisals if they violate an overly broad rule or directive prohibiting employees from wearing union insignia while permitting employees to wear other insignia.

(y) Escorting its employees out of the facility to enforce an overly broad rule or directive prohibiting employees from distributing Union fliers during non-work time anywhere at the Respondent's facility.

(z) Suggesting to employees that they form a committee, and recognizing and bargaining with that committee, to deal with the Respondent concerning wages, hours, and other terms and conditions of employment.

(aa) Issuing a warning to and discharging employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(bb) Imposing more onerous working conditions on employees because they engage in union activities or other protected concerted activities.

(cc) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self organization, to form labor organizations, to join or assist the United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

(dd) Dominating or interfering with the administration of the AZ Employee Committee, or dominating or interfering with the formation or administration of any other labor organization of its employees, or from contributing financial or other support to the AZ Employee Committee or to any other labor organization of its employees.

(ee) Discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, in order to discourage membership in the United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC, or in any other labor organization.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) The Respondent will not recognize the AZ Employee Committee as representative of any of its employees for the purpose of dealing with the Respondent with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, unless and until the organization has been certified by the National Labor Relations Board as such representative.

(b) Within 14 days from the date of the Board's Order, offer, in writing, Enedina Negrete (Negrete) and Yolanda Luna (Luna) full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed.

(c) Within 14 days from the date of the Board's Order, remove from the Respondent's files any reference to the discipline of Blanca Aguilar and Julia Rodriguez issued after October 1, 2014, and to the discharges of Negrete and Luna, and within 3 days thereafter, notify those employees, in writing, that this was done and that the discharges and discipline will not be used against them in any way.

(d) Make whole the following employees for any loss of pay they may have suffered by payment to them of the amounts set forth opposite their respective names:

<u>Name</u>	<u>Backpay</u>	<u>Interest</u>	<u>Excess Tax</u>	<u>Total</u>
Negrete	\$11,738	\$95	\$146	\$11,979
Luna	\$7669	\$37	\$0	\$7706

(e) Make whole Negrete and Luna for any additional loss of pay caused by the Respondent's failure, if any, to reinstate them in accordance with the provisions of this Order, within 14 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 15th day after the date of the Board's Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed on a quarterly basis.

(f) Within 14 days of service by the Region, post at its facilities in the Phoenix metropolitan area, copies of the attached notice marked "Appendix A" in English and in additional languages if the Regional Director for Region 28 decides that it is appropriate to do so. Copies of the notice, on forms provided by Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2014.

(g) In addition to physical posting of paper Notices, the Respondent shall distribute Notices electronically, by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Respondent will email the Region's Compliance Officer at cheryl.leavengood@nlrb.gov with a link to the electronic posting location on the same day as the posting. In the event that passwords or other log-on information is required to access the electronic posting, the Respondent agrees to provide such access information to the Region's Compliance Officer. If the Notice is distributed via email, the Respondent will forward a copy of the email distributed to the Regional Compliance Officer.

(h) The Notices and an Explanation of Rights attached and marked as "Appendix A" and "Appendix B" will be read aloud by an agent of the Board in the presence of David Anderson, Diana O'Connor, and all other supervisors and managers working at the Respondent's facility, to all employees employed by the Respondent at its facility, including at multiple meetings and in other languages, if necessary as determined by the Regional Director, to ensure that it is read aloud to all employees, within 14 days from the commencement of the standard posting period.

(i) The Respondent will allow representatives of the Union access to the Respondent's facility to speak to the Respondent's employees on one occasion, covering both the a.m. and p.m. shifts, for 30 minutes, within the 60 day standard notice posting period.

(j) This stipulation is subject to the approval of the Board and, immediately upon the approval by the Board, it will be retroactively effective to the date of execution of the stipulation.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 24, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected concerted activities.

WE WILL NOT interrogate you about your activities on behalf of and/or sentiments toward the United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC (the Union).

WE WILL NOT interrogate you about other employees' activities on behalf of and/or sentiments toward the Union.

WE WILL NOT promise you benefits if you informed us about the union activities of other employees.

WE WILL NOT threaten you with unspecified reprisals for your union or other protected concerted activities.

WE WILL NOT solicit complaints and grievances from you in order to discourage you from supporting the Union.

WE WILL NOT threaten you with loss of benefits if you obtained union representation.

WE WILL NOT tell you it would be futile for you to select the Union as your representative.

WE WILL NOT undermine the Union as a bargaining representative by informing employees that the Union agent was in jail for identity theft.

WE WILL NOT threaten you with discharge because of your Union or other protected concerted activities.

WE WILL NOT undermine the Union by telling you that the Union will use your authorization cards for purposes other than its organizing campaign.

WE WILL NOT ask you to sign a letter or a petition seeking the return of your authorization cards from the Union.

WE WILL NOT engage in surveillance of your union activities or other protected concerted activities.

WE WILL NOT threaten you with unspecified reprisals if you do not ask for your Union authorization cards back.

WE WILL NOT threaten you by telling you that our facility will be sold if you selected the Union as your representative.

WE WILL NOT promise you increased benefits and improved terms and conditions of employment if you rejected the Union as your representative.

WE WILL NOT summon the local police to implement our demand that Union agents and employees remove themselves from public property and stop their lawful handbilling on behalf of the Union.

WE WILL NOT promulgate and enforce an overly broad rule prohibiting you from distributing union fliers during non-work time anywhere at our facility.

WE WILL NOT threaten you with discharge and unspecified reprisals if you violate the overly broad rule prohibiting employees from distributing union fliers during non-work time anywhere at our facility.

WE WILL NOT promulgate an overly broad rule that prounion employees cannot talk to fellow employees at our facility.

WE WILL NOT threaten you with unspecified reprisals if you violate the overly broad rule that prounion employees cannot talk to fellow employees at our facility.

WE WILL NOT issue warnings to prounion employees for talking to fellow employees at our facility.

WE WILL NOT promulgate an overly broad rule prohibiting you from wearing prounion shirts and hats while allowing other employees to wear antiunion shirts and hats.

WE WILL NOT threaten you with unspecified reprisals if you violate the overly broad rule prohibiting you from wearing prounion shirts and hats while allowing other employees to wear antiunion shirts and hats.

WE WILL NOT escort you out of the facility to enforce an overly broad rule prohibiting you from distributing union fliers during non-work time anywhere at our facility.

WE WILL NOT suggest to you that you form a committee, and then recognize and bargain with that committee, to deal with us concerning your wages, hours, and other terms and conditions of employment.

WE WILL NOT issue you warnings or discharge you because you engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

WE WILL NOT impose more onerous working conditions on you because you engaged in union activities or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights to self organization, to form labor organizations, to join or assist the United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC, or any other labor organization, to bargain collectively through representatives of your own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL NOT dominate or interfere with the administration of the AZ Employee Committee, or dominate or interfere with the formation or administration of any other labor organization of our employees, or contribute financial or other support to the AZ Employee Committee or to any other labor organization of our employees.

WE WILL NOT recognize the AZ Employee Committee as a representative of any of our employees for the purpose of dealing with us with respect to grievances, labor disputes, wages, rates of pay, hours of employment and other conditions of employment, unless and until the organization has been certified by the National Labor Relations Board as such representative.

WE WILL NOT discharge or refuse to reinstate any of our employees or in any other manner discriminate in regard to hire or tenure of employment or any other term or condition of employment, in order to discourage membership in the United Food and Commercial Workers Union, Local 99, AFL-CIO, CLC, or in any other labor organization.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

WE WILL make Enedina Negrete and Yolanda Luna whole for any loss of earnings and other benefits suffered as a result of our discharge of them, with interest.

WE WILL remove from our files all references to the warnings issued to Blanca Aguilar and Julia Rogriguez issued after October 1, 2014, and to the discharges of Enedina Negrete and Yolanda Luna, and **WE WILL** notify them in writing that this has been done and that the discharges and discipline will not be used against them in any way.

WE WILL offer Enedina Negrete and Yolanda Luna immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed.

GOURMET BOUTIQUE WEST, LLC

The Board's decision can be found at www.nlrb.gov/case/28-CA-145632 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B

Explanation of Rights

Employees covered by the National Labor Relations Act have the right to join together to improve their wages and working conditions, including by organizing a union and bargaining collectively with their employer, and also the right to choose not to do so. This Explanation of Rights contains important information about your rights under this Federal law. The National Labor Relations Board has entered into a settlement agreement with Gourmet Boutique that requires a Board Agent to provide you with this Explanation of Rights to describe your rights and to provide examples of illegal behavior.

Under the National Labor Relations Act, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and working conditions.
- Support your union in negotiations.
- Discuss your wages, benefits, other terms and conditions of employment, and collective-bargaining negotiations with your coworkers or your union.
- Take action with one or more coworkers to improve your working conditions.
- Strike and picket, depending on the purpose or means used.
- Choose not to do any of these activities.

It is illegal for your employer to:

- Threaten you with job loss or loss of pay or benefits, or threaten to close your workplace, if you support a union.
- Question you about your union sympathies or activities, or the sympathies or activities of other employees, in circumstances where that questioning tends to interfere with, restrain, or coerce you in the exercise of the rights listed above.
- Promise you benefits, such as promotions, pay raises, or better treatment, in order to discourage your support for the union.
- Warn, suspend, discharge, transfer, or reassign you to another shift or more difficult work because you have supported the union. It is also illegal for your employer to threaten to do any of these things.

- Fire, lay off, transfer, or reassign you to another shift or to more difficult work, or take other adverse action against you because you have filed an unfair labor practice charge or participated in an investigation conducted by the National Labor Relations Board. It is illegal for your employer to threaten to do any of these things.
- Spy on your activities in support of your union.

If employees obtain union representation, your employer would have the following obligations:

- Your employer would have to meet with your union at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices, and other mandatory subjects.
- Your employer would have to participate actively in the negotiations with a sincere intent to reach an agreement.
- Upon a request by the union, your employer would be required to provide information to the union that it needs to do its job as your representative.
- If a collective-bargaining agreement is reached between your union and the employer, your employer would have to continue to bargain with the union after the agreement expires and could not change employees' existing working terms and conditions while bargaining continues.
- Your employer would have to honor any collective-bargaining agreement that it reaches with your union.
- Your employer could not retaliate against you if you participate or assist your union in collective bargaining.
- Your employer could not make unilateral changes in your terms and conditions of employment without first providing your union with notice of the proposed changes and affording the union an opportunity to bargain about the changes, except in certain situations.

Illegal conduct will not be permitted. The National Labor Relations Board enforces the Act by prosecuting violations. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within 6 months of the unlawful activity. You may ask about a possible violation without your employer or anyone else being informed that you have done so. The NLRB will conduct an investigation of possible violations if a charge is filed. Charges may be filed by any person and need not be filed by the employee directly affected by the violation.

You can contact the NLRB's regional office, located at: 2600 N. Central Avenue, Suite 1400, Phoenix, AZ 85004

Or you can contact the NLRB by calling: 602-640-2160

For more information about your rights and about the National Labor Relations Board and the Act, visit the Agency's Website at <http://www.nlr.gov>